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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DENISE BARNES and PETER BARNES,

11 Plaintiffs,

12 v.

13 CITY OF MILTON,

14 Defendant.

Case No. C09-5034 FDB

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

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16 Plaintiffs move for appointment of counsel to prosecute this civil rights action. Generally,
17 there is no constitutional right to counsel in a civil case. United States v. 30.64 Acres of Land, 795
18 F.2d 796, 801 (9th Cir. 1986). However, pursuant to 28 U.S.C. § 1915(d), the court has discretion to
19 request volunteer counsel for indigent plaintiffs in exceptional circumstances. Id.; Wood v.
20 Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990). While the court may request volunteer counsel
21 in exceptional cases, it has no power to make a mandatory appointment. Mallard v. U.S. Dist.
22 Court of Iowa, 490 U.S. 296, 301-08 (1989). In order to determine whether exceptional
23 circumstances exist, the court evaluates the plaintiff's likelihood of success on the merits and the
24 ability of the plaintiff to articulate his or her claim pro se in light of the complexity of the legal
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1 issues involved. Wood, at 1335-36; Richards v. Harper, 864 F.2d 85, 87 (9th Cir. 1988).


2 Initially, the Plaintiffs have not established *in forma pauperis* status. Moreover, Plaintiffs
3 have not demonstrated a likelihood of success on the merits or exceptional circumstances which
4 warrant appointment of counsel. Accordingly, Plaintiffs' motion for appointment of counsel will be
5 denied.

6 ACCORDINGLY,

7 IT IS HEREBY ORDERED:

8 Plaintiffs' motion for appointment of counsel [Dkt. #14] is **DENIED**.

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10 DATED this 16th day of September, 2009.

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14 FRANKLIN D. BURGESS
15 UNITED STATES DISTRICT JUDGE
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